HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISC. APPEAL (C) NO. 24 of 2007

APPELLANTS

1) Smt K Padmaja, W/o Late Shri K Shriniva, aged 30 years

2) Ku. K Vinita, 9 years
3) Ku. K Vindhya, 6 years
(Both daughters of late Shri K Shrinivas through their natural guardian appellant No.1 - Smt K Padmaja)

4) Smt K Manga Raju, W/o Late Shri KS Raju, 67 years

All resident of MIG 2/351, HUDCO, Bhilai Nagar, PS Bhilai Nagar, Kotwali, Tah; & Distt.DURG

Versus

RESPONDENTS

1) Jaspal Masih @ Jaspal Singh S/o Sadhu Singh C/o Shri Krishna Transport, Transport Nagar, Raipur, Tatiband, Distt Raipur CG -- Driver

2) Saranjit Singh S/o Darshan Singh R/o Transport Nagar, Raipur, Tatiband, Shri Krishna Transport, Transport Nagar, Raipur, Tatiband, Distt.Raipur CG -- Owner

3) United India Insurance Co. Ltd. Through Branch Manager, Tara Complex, GE Road, Power Hosue, Bhilai, Tah & Distt.Durg, CG

Present : Shri Yashwant Tiwari, counsel for the appellants.
None for the respondents.

ORAL ORDER

(Passed on 15th March, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This is an appeal filed under Section 173 of the Motor Vehicle Act 1988 (henceforth "the Act") for enhancement of compensation against the award dated 25.09.2006, passed by Eleventh Additional Motor Accident Claim Tribunal, (FTC), Durg (CG) (henceforth "the Tribunal") in claim case No.67/2005, whereby compensation of Rs.9,78,000/- has been awarded to the appellants.

2) Factual matrix of the case in brief is that, on 22.05.2004 K Shrinivas (since deceased) was going to Raipur on his motorcycle. On his way, he met with an accident, which was caused by respondent No.1, who was driving the vehicle bearing registration No.CG-04-G-3965 in a rash and negligent manner. Deceased sustained fatal injuries and succumbed to those. Consequently, a petition under Section 166 of the Act has been filed by the appellants who are wife, daughters and mother of deceased for compensation against respondents who are driver, owner and insurer of the offending vehicle. Respondents No.1 & 2 remained *ex-parte*, whereas respondent No.3 contested the claim.

3) Learned Tribunal after appreciating the evidence adduced by both the parties, awarded compensation as below :

(a)	Amount of dependency	Rs.8,96,000/-
(b)	For funeral expenses	Rs.2,000/-
(c)	For loss of consortium	Rs.10,000/-
(d)	For love and affection	Rs.30,000/-
(e)	For mental agony	Rs.40,000/-
	Total Award	**Rs.9,78,000/-**

4) Heard learned counsel for the appellants. Learned counsel contended that deceased was a contractor. Income tax return "SARAL" has been filed for the year 2001 - 02. Deceased did not file income tax returns for the subsequent years due to late receipt of TDS. TDS certificates issued by Chhattisgarh State Electricity Board have been filed before the Tribunal for assessment of income of the deceased. Tribunal without proper appreciation of those documents incorrectly assessed the income of the deceased as Rs.84,000/- per year. Income up to 1 (one) lakh is exempted from income tax.

5) We have gone through the record and award. All the documents Ex.P/7 to P/16 said to be TDS forms have been issued in favour of M/S Padma Construction, Bhilai. All these documents simply unveil that contractor bill was paid after deducting tax. There is no legal evidence to show that deceased was the exclusive proprietor of the firm/company. Set apart, all those documents include expenditure incurred by the said firm in carrying out the work. Those documents do not show net profit.

Therefore, those documents can not be relied on for assessing the income of the deceased. Non-filing of return by the deceased after 2001-02 constrains us to draw adverse inference against him. Deceased was knowing the consequences of non-filing of income tax return, if did not file the same after assessment year 2002-03; it means he had no such income which may lead to file income tax return. In the assessment year 2002-03 deceased himself showed his income in the "SARAL" form Rs.83,120/-. Learned Tribunal accepted his annual income Rs.84,000/-, reduced 1/3 towards his own expenses and thereafter in view of his age, which was more than 38 years at the time of accident according to his own declaration, applied multiplier of 16, and recorded loss of dependency Rs.8,96,000/-. The Tribunal also awarded compensation towards consortium, mental agony, love & affection, and funeral expenses. The Tribunal did not err in allowing the compensation to the claimants.

6) We are of the considered opinion that there is no illegality or infirmity in the factual findings recorded by the Tribunal which may call for interference by this Court in its appellate jurisdiction. The appeal is liable to be dismissed and it is accordingly dismissed. No costs

Sd/-
V.K. Shrivastava
Judge

Sd/-
Chief Justice